IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 915 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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KOTHARI CONSTRUCTION EQUIPMENTPVT.LTD. - Petitioner(s)

Versus

STATE OF GUJARAT THR' SECRETARY & 3 - Respondent(s)

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Appearance :
MR KB PUJARA for Petitioner(s) : 1,
MR. PRACHCHHAK, ASST. GOVERNMENT PLEADER for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 4.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 03/02/2006

ORAL JUDGMENT

1.By way of this petition under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Deputy Collector, Stamp Duty Valuation, Vadodara dated 26.8.2002 passed under Section 32(A) of the Bombay Stamp Act as well as the order passed by the Chief Revenue Controlling Authority in not entertaining the appeal under Section 32(B) of the Bombay Stamp Act on the ground that the same is filed after a period of 90

days.

2. It is the contention on behalf of the petitioner that the order dated 26.8.2002 passed by the Deputy Collector, Stamp Duty Valuation, Vadodara and/or even the Notice under Rule-4 was not served upon the petitioner and therefore, the petitioner was not given any opportunity and the order passed by the Deputy Collector, Stamp Duty Valuation, Vadodara dated 26.8.2002 is an ex-parte order and the same is in breach of principles of natural justice.

3. Shri Prachchhak, learned AGP under the instructions from the Officer, more particularly, under the instructions of Deputy Collector, Stamp Duty Valuation, Vadodara has submitted that in fact, the Notice and/or order were sent at the address furnished by the petitioner but the said Notice and/or order came to be returned without service and therefore, the respondent authority is not at fault. Be that as it may, the fact remains that the impugned order has been passed by the Deputy Collector, Stamp Duty Valuation, Vadodara dated 26.8.2002 by which the petitioner was not heard. Under the circumstances, without entering into the merits of

the case, the order passed by the Deputy Collector, Stamp Duty Valuation, Vadodara dated 26.8.2002 is hereby quashed and set aside and the matter is remanded to the Deputy Collector, Stamp Duty Valuation, Vadodara for passing an appropriate order in accordance with law and on merits after hearing and giving an opportunity to the petitioner.

4. Shri K.B.Pujara, learned advocate appearing on behalf of the petitioner has submitted that the petitioner will make himself available before the Deputy Collector, Stamp Duty Valuation, Vadodara at the first instance on **14th February, 2006 at 12.00 O'clock** and it will be open for the petitioner to ask for the documents inclusive of the Notice issued under Rule-4 and the Deputy Collector, Stamp Duty Valuation, Vadodara is directed to furnish the same as it is the contention on behalf of the petitioner that the petitioner has not received the Notice under Rule-4. The petitioner is directed to furnish the fresh address to the respondent authority and thereafter, after the petitioner appears before the authority on 14th February, 2006, a reasonable time may be given by the Deputy Collector, Stamp Duty Valuation, Vadodara to the

petitioner to file reply to the same and thereafter, on furnishing the reply and after giving an opportunity, the Deputy Collector, Stamp Duty Valuation, Vadodara to pass an appropriate order under Section 32(A) of the Bombay Stamp Act in accordance with law and on merits as early as possible preferably within a period of 2 months thereafter and shall communicate the order to the petitioner accordingly. It is, however, made clear that this Court has not expressed any opinion on the merits of the case and the impugned order has been set aside and the matter is remanded as the petitioner was not served with the Notice and/or order and it is ultimately for the Deputy Collector, Stamp Duty Valuation, Vadodara to pass an appropriate order in accordance with law and on merits, as stated above.

5. Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

Direct Service is permitted.

(M.R.SHAH, J.)

kdc.